Anne Theresa de Souza v Majlis Agama Islam, Jabatan Agama Islam Selangor & Ors and other appeals

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-01–76 OF 2006, B-01–77 OF 2006 AND B-01–78 OF 2006

TENGKU BAHARUDIN SHAH, VINCENT NG AND SULONG MATJERAIE JJCA

16 MARCH 2010

Civil Procedure — Appeal — Bringing of — Competency of appeal — Whether appellant non-legal entity — Whether had capacity to appeal — Whether appeal competent

The issue of competency of appeal was raised by the court as the appellant appeared to have no legal entity and the issue was whether a non-legal entity could prosecute the appeal or initiate an action in the court. The appellant submitted that she had stopped using her Muslim name of Noorashikin Lim bt Abdullah ('Noorashikin') by a deed of poll and referred to her birth certificate which bore her original Chinese name of Lim Yoke Khoon and her conversion certificate. She contended that there was no dispute as to her identity and no prejudice was caused and further submitted that the name referred to a legal person and a living person. However, the second respondent contended that the appellant ceased to exist in law when she converted to Islam and took another name and thus the appeal was not competent as the appellant was not a legal entity.

Held, dismissing the application:

> The appellant had converted to Islam and acquired a new identity by the name of Noorasyikin and had also changed her IC to IC No 730218–05–6122. There was no natural person or legal entity by the name of the appellant when the originating summons ('OS') was instituted. The deed poll purportedly sworn by Noorasyikin appeared to be signed by the appellant whereas the *surat akuan* purportedly sworn and signed by the appellant bear the IC No of Noorasyikin. The natural person and the holder of IC No 730218–05–5122 was Noorasyikin and not the appellant. As such the appellant remained a non-entity, could not initiate the OS in the High Court and had no capacity to come to the court by way of appeal against the decision made which, in the circumstances, was itself a nullity. Thus, the appeal was clearly incompetent (see paras 8 & 10).

[Bahasa Malaysia summary

Isu kompetensi dibangkitkan oleh mahkamah kerana perayu kelihatan seperti tidak mempunyai entiti sah di sisi undang-undang dan isu tersebut adalah sama ada satu entiti tidak sah di sisi undang-undang boleh mendakwa rayuan atau memulakan satu tindakan dalam mahkamah. Perayu menghujah bahawa dia telah berhenti menggunakan nama Islamnya Noorashikin Lim bt Abdullah ('Noorashikin') melalui satu suratikatan pol dan merujuk kepada sijil kelahirannya yang membawa nama asal Cinanya Lim Yoke Khoon dan sijil penukaran agamanya. Dia menyatakan bahawa tidak ada pertikaian terhadap identitinya dan tiada prejudis yang berlaku dan seterusnya menghujahkan bahawa nama tersebut merujuk kepada seseorang yang hidup dan wujud secara sah. Bagaimanapun, responden kedua menyatakan bahawa perayu sudah tidak lagi wujud apabila dia memeluk agama Islam dan mengambil nama yang lain dan dengan demikian rayuan tersebut tidak kompeten kerana perayu bukan satu entiti sah di sisi undang-undang.

Diputuskan, menolak permohonan:

Perayu telah memeluk agama Islam dan memperolehi satu identiti baru dengan nama Noorasyikin dan juga menukar KPnya kepada KP No 730218–05–6122. Tidak ada orang sebenar atau entiti sah di sisi undang-undang dengan nama perayu apabila saman pemula ('SP') dimulakan. Suratikatan pol yang dikatakan diikrarkan oleh Noorasyikin didapati ditandatangani oleh perayu manakala surat akuan yang dikatakan diikrarkan dan ditandatangani oleh perayu mempamerkan nombor KP Noorasyikin. Orang sebenar dan pemegang KP No 730218–05–5122 adalah Noorasyikin dan bukannya perayu. Oleh itu perayu kekal tidak berentiti, tidak boleh memulakan SP dalam Mahkamah Tinggi dan tidak berkapasiti untuk datang ke mahkamah ini melalui cara rayuan terhadap keputusan yang dibuat tersebut, yang dalam hal keadaan yang wujud juga merupakan satu ketaksahan. Maka, rayuan dengan jelas tidak berkompeten (lihat perenggan 8 & 10).]

Notes

For a case on bringing of appeal, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) para 815.

Legislation referred to

National Registration Act 1959 s 5
Rules of the High Court 1980 O 5 r 6(1)

Appeal from: Originating Summons Nos 21–249 of 2003, 21–260 of 2003 and 21–272 of 2003 (High Court, Shah Alam)

Edmund Bon (Shanmuga Kanesalingam, Sharmala Balasundram and Nik Mohamed Ikhwan with him) (Chooi & Co) for the appellant.

Kamaazura (Aishah Kama & Sabri) for the first respondent.
Zauyah (Mohd Azahari with her) (State Legal Advisor, Selangor) for the second respondent.
Nizam Zakaria (Arik Sanusi and Mona Hazratulaswati with him) (Senior Federal Counsel, Attorney General's Chambers) for the third and fourth respondents.

Tengku Baharudin Shah JCA:

[1] When these appeals came before us the parties agreed, as similarly done in the court below, that only appeal RS No B-01–77 of 2006 be heard and the decision thereon would bind the other appeals RS No B-01–76 of 2006 and RS No B-01–78 of 2006.

[2] At the outset, I asked the parties to submit on whether we had a competent appeal before us as the appellant appeared to have no legal entity and whether a non-legal entity could prosecute the appeal or initiate an action in court.

[3] Learned counsel for the appellant En Edmund Bon referred to the deed poll at p 312 of the appeal record ('AR') and submitted that the appellant had stopped using her Muslim name of Noorashikin Lim bt Abdullah ('Noorashikin') by the said deed poll. He referred to her birth certificate at p 279 of the AR which bore her original Chinese name of Lim Yoke Khoon. He also referred to her conversion certificate at p 281 of the AR and contended that there was no dispute as to her identity and no prejudice was caused. He further submitted that the name of the appellant referred to a legal person and a living person.

[4] In the event the court was not with him learned counsel sought to make an oral amendment to the appellant's name by substituting the later name in the title of this proceedings with the earlier name and vice versa.

[5] Datin Paduka Zauyah on behalf of Kerajaan Negeri Selangor (the second respondent) contended that the appellant ceased to exist in law when she converted to Islam and took another name. Learned counsel did not object to the name change at first but later reversed her stand. She averred that the appeal was not competent because the appellant was not a legal entity. She referred to the *surat akuan* at p 306 of the AR and the deed poll at p 312 of the AR. Pn Kamar Azura for Majlis Agama Islam (the first respondent) objected to the amendment as the appeal was incompetant. She pointed that the identity card ('IC') number differed from the present IC number in the Muslim name. In fact the deed poll at p 292 of the AR was sworn by Noorashikin but signed by Lim Yoke Khoon. She also pointed out

that the IC number in *surat akuan* at p 306 of the AR did not in fact refer to the person named in the IC of that number at p 280 of the AR.

[6] En Arik Sanusi for the Director General of the National Registration Department (the third respondent) and the Government of Malaysia (the fourth respondent) also submitted that the appeal was incompetent because the names used were confusing. He contended that in law the identity of a person is based on his IC. The person named as the plaintiff and now the appellant no longer existed. On that basis he raised a preliminary objection that the misnomer was fatal as there was no plaintiff or appellant as named.

[7] In his reply En Bon said since the originating summons ('OS') was served with the supporting affidavit until then there was no dispute as to the identity of the appellant as a legal and natural person, a Malaysian citizen and a competent person to seek remedies in this court. There was no question of multiple identities. He stressed that no disability was shown by the respondent in law or fact which prevented the appellant from seeking legal remedies.

[8] At the close of arguments we ruled by majority, with our late brother Vincent Ng JCA dissenting, that the appeal was incompetent and not properly before the court. The person named as the appellant who was also the plaintiff in the court below was not a legal entity. She had converted to Islam and acquired a new identity by the name of Noorasyikin and also changed her IC to IC No 730218–05–6122. We struck out the appeal but made no order in respect of costs as the fatal issue emanated from the bench rather than the bar.

[9] Rules of court regulate and prescribe the procedure and practice to be followed in the courts in all causes and matters in or with respect to which the courts have for the time being jurisdiction and any matters incidental thereto. Order 5 r 6(1) of the Rules of the High Court 1980 ('the RHC') provides that any person other than a person under disability or body corporate may begin and carry on proceedings in the High Court by a solicitor or in person. The words 'any person' there, in view of the exception must necessarily refer to a natural person who can be legally identified. The National Registration Act 1959 ('the NRA') is the law that provides for the registration of persons in Malaysia, for the issue of identity cards and for purposes connected with it. Section 5 of the NRA makes it mandatory for every person within Malaysia to be registered under and in accordance with it. So any person in Malaysia must have an IC which serves as his official and legal identification document and contains his prescribed particulars.

[10] In the present case, the person named as the appellant before us and as the plaintiff in the court below had no legal identity. Put in another way, there was no natural person or legal entity by the name of the plaintiff or the appellant when the OS was instituted, or this appeal filed. The appellant purported to depose the affidavit filed in support of the OS but the IC number ascribed to her therein in fact belonged to Noorasyikin. The deed poll purportedly sworn by Noorasyikin at p 292 of the AR appeared to be signed by the appellant (her name appears to be the signatory) whereas the *surat akuan* purportedly sworn and signed by the appellant at p 306 of the AR bear the IC number of Noorasyikin. Amidst such confusion and misnomer one fact that stood out unchallenged was that the natural person and the holder of the IC No 7302218–05–5122 was Noorasyikin and not the appellant or plaintiff. One may prefer to use names other than one's registered name but that would not alter one's legal identity as reflected in the IC unless and until such preference was duly effected according to the NRA. For the moment the appellant remained a non-entity, could not initiate the OS in the High Court, and had no capacity to come to this court by way of appeal against the decision made which was itself in the circumstances a nullity. The appeal was clearly incompetent and not properly before us. Accordingly, the application to amend the appellant's name, being interlocutory to an incompetent appeal could not be entertained.

[11] En Bon submitted that the appellant's identity was until then not disputed as being a natural person and a Malaysian citizen competent to seek remedies in the courts. The issue of identity was only a label and no disability was shown to prevent the appellant from coming to court to seek legal redress. With respect, whether a non-entity can institute a claim or lodge an appeal was not a technical issue nor an irregularity that could be waived. It was a basic issue of law and jurisdiction which was fatal to the proceedings. It was not a mere question of labelling. Without a litigant there would be no litigation. We had no appellant before us. Nobody was prevented from coming to court to seek relief, only that, in this case, nobody came.

[12] For the abovesaid reasons we made the order we did. As agreed at the outset the related appeals would be bound by the decision. Our late brother did not impart his reasons to differ except to indicate his preference for the merit to be heard.

Application dismissed.

Reported by M Sivabarathi